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OFFICE OF PETITIONS

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CORPORATE INTELLECTUAL PROPERTY
ONE HEALTH PLAZA 104/3
EAST HANOVER, NJ 07936-1080

In re Patent of Hellstern et al.	:	DECISION ON REQUEST
Patent No. 7,615,609	:	FOR RECONSIDERATION OF
Issue Date: November 10, 2009	:	PATENT TERM ADJUSTMENT
Application No. 10/567,299	:	AND NOTICE OF INTENT TO
Filing Date: February 6, 2006	:	ISSUE CERTIFICATE OF
Attorney Docket No. ON/4-33308A	:	CORRECTION

This is a decision on the petition filed January 8, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by two hundred (200) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by two hundred (200) days is **GRANTED to the extent indicated herein**.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

Patentees contend the period of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") is 62 days and the period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") is 277 days.

The Office would agree the patent term adjustment is 200 days *if* the period of A Delay was 62 days and the period of B Delay was 277 days. However, the Office contends the period of A Delay is 59 days and the period of B Delay is 275 days.

A Delay

The Office determined the period of A Delay is 59 days when calculating the patent term adjustment that appeared on the Notice of Allowance and on the patent. Patentees contend the period of A Delay is 62 days.

37 C.F.R. § 1.705(d) states, "Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues." The period of A Delay in this case is based solely on events that took place prior to the mailing of the Notice of Allowance and a petition under 37 C.F.R. § 1.705(b) could have been filed asserting the period of A Delay is 62 days. Therefore, the instant decision will not review the Office's prior determination that the period of A Delay is 59 days.

B Delay

Subject to some exceptions, 35 U.S.C. § 154(b)(1)(B) provides for a patent term adjustment when the Office issues a patent more than "3 years after the actual filing date of the application in the United States." In the case of an international application, the phrase "actual filing date of the application in the United States" means the date the national stage commenced under 35 U.S.C. 371(b) or (f). *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term*, 65 FR 56366, 56382-84, (Sept. 18, 2000), 1239 Off. Gaz. Pat. Office 14, 28-30 (Oct. 3, 2000).

In this case, the national stage commenced February 8, 2006. Therefore, the period of B Delay is 275 days which is the number of days beginning February 9, 2009, the day after the date three years after the date of commencement, and ending on November 10, 2009, the date of issuance.

Conclusion

The patent term adjustment is 195 days, which is the sum of 59 days of A Delay and 275 days of B Delay reduced by 0 days of overlap between A Delay and B Delay and reduced by 139 days of Applicant Delay.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **one hundred ninety-five (195) days**.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

**UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION**

PATENT NO. : 7,615,609 B2
APPLICATION NO. : 10/567,299
DATED : November 10, 2009
INVENTOR(S) : Heribert Hellstern et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 136 days.

Delete the phrase "by 136 days" and insert -- by 195 days--